

48A C.J.S. Judges § 11

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

I. In General

A. Definitions and Distinctions

3. Magistrate

§ 11. Generally

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The term "magistrate," in a narrow or strict sense, imports an inferior judicial officer but, in a general sense, imports a public officer exercising a public authority.

It is difficult to give to the term "magistrate," derived from the Latin magistratus,¹ any definite meaning.² It may properly be used as a generic term³ with a general sense⁴ or in a narrow or strict sense.⁵

In its narrow sense, a magistrate is regarded as an inferior judicial officer,⁶ such as a justice of the peace.⁷ In this sense, a magistrate is a judicial officer having summary jurisdiction in matters of a criminal or quasi-criminal nature⁸ or an officer having the power to issue a warrant for the

arrest of a person charged with the commission of a crime⁹ or public offense.¹⁰ The term does not include a clerk of the county court,¹¹ a district attorney,¹² or a notary public.¹³

In its general sense, the term imports a public officer exercising a public authority,¹⁴ that is, a public civil officer possessing such power, legislative, executive, or judicial, as the government appointing him or her ordains, or a person clothed with power as a public civil officer.¹⁵ Accordingly, in its broader sense, the term may be employed as including a burgess of a borough,¹⁶ a city judge and ex officio justice of the peace,¹⁷ a judge of a municipal court,¹⁸ a justice of the peace,¹⁹ a notary public,²⁰ a police judge,²¹ a police magistrate,²² and a trial justice.²³

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Footnotes

- 1 Ark.—*Martin v. State*, 32 Ark. 124, 1877 WL 1612 (1877).
- 2 N.Y.—*People ex rel. Hollander v. Britt*, 195 Misc. 722, 92 N.Y.S.2d 662 (Sup 1949), order aff'd, 276 A.D. 815, 93 N.Y.S.2d 704 (4th Dep't 1949).
- 3 Colo.—*People v. Curley*, 5 Colo. 412, 1880 WL 185 (1880).
- 4 U.S.—*Compton v. State of Alabama*, 214 U.S. 1, 29 S. Ct. 605, 53 L. Ed. 885 (1909).

As to a coroner's judicial powers, see C.J.S., *Coroners* § 8.

As to jurisdiction of a magistrate to examine and commit persons charged with crime, see C.J.S., *Criminal Law* §§ 459, 460.

As to definition of magistrate within statutory requirement that affidavit taken before a magistrate in extradition proceedings, see C.J.S., *Extradition and Detainers* § 28.
- 5 U.S.—*Compton v. State of Alabama*, 214 U.S. 1, 29 S. Ct. 605, 53 L. Ed. 885 (1909).
- 6 U.S.—*Hardy v. Kirchner*, 232 F. Supp. 751 (E.D. Pa. 1964).
- 7 U.S.—*Compton v. State of Alabama*, 214 U.S. 1, 29 S. Ct. 605, 53 L. Ed. 885 (1909).

N.Y.—*People ex rel. Hollander v. Britt*, 195 Misc. 722, 92 N.Y.S.2d 662 (Sup 1949), order aff'd, 276 A.D. 815, 93 N.Y.S.2d 704 (4th Dep't 1949).
- 8 N.Y.—*People ex rel. Hollander v. Britt*, 195 Misc. 722, 92 N.Y.S.2d 662 (Sup 1949), order aff'd, 276 A.D. 815, 93 N.Y.S.2d 704 (4th Dep't 1949).

A.L.R. Library
Criminal jurisdiction of magistrate under Federal Magistrates Act of 1968 (29 U.S.C.A. secs. 631 et seq.), 127 A.L.R. Fed. 309.
- 9 Pa.—*Commonwealth v. Templeton*, 33 Pa. C.C. 415, 1906 WL 4201 (Pa. C.P. 1906).

- 10 N.Y.—*People ex rel. Hollander v. Britt*, 195 Misc. 722, 92 N.Y.S.2d 662 (Sup 1949), **order aff'd**, 276 A.D. 815, 93 N.Y.S.2d 704 (4th Dep't 1949).
- 11 Okla.—*Bowen v. State*, 1911 OK CR 131, 5 Okla. Crim. 605, 115 P. 376 (1911).
- 12 N.Y.—*People v. Randazzio*, 194 N.Y. 147, 87 N.E. 112 (1909).
- 13 Ga.—*Deering v. Mount*, 194 Ga. 833, 22 S.E.2d 828 (1942).
- 14 Colo.—*Self v. People*, 167 Colo. 292, 448 P.2d 619 (1968).
- 15 N.Y.—*People ex rel. Hollander v. Britt*, 195 Misc. 722, 92 N.Y.S.2d 662 (Sup 1949), **order aff'd**, 276 A.D. 815, 93 N.Y.S.2d 704 (4th Dep't 1949).
- A.L.R. Library**
Civil jurisdiction of magistrates under Federal Magistrates Act of 1968 (28 U.S.C.A. secs. 631 et seq.), 128 A.L.R. Fed. 115.
Criminal jurisdiction of magistrate under Federal Magistrates Act of 1968 (29 U.S.C.A. secs. 631 et seq.), 127 A.L.R. Fed. 309.
- 16 Pa.—*Borough of Kittanning v. Burns*, 47 Pa. Super. 540, 1911 WL 4622 (1911).
- 17 Fla.—*State v. Allen*, 83 Fla. 655, 92 So. 155 (1922).
- 18 Ohio—*State v. Wheelock*, 64 Ohio L. Abs. 129, 111 N.E.2d 412 (Mun. Ct. 1951).
- A.L.R. Library**
Criminal Jurisdiction of Municipal or Other Local Court, 102 A.L.R.5th 525.
- 19 Tex.—*Carnell v. State*, 126 Tex. Crim. 104, 70 S.W.2d 152 (1934).
- 20 U.S.—*Compton v. State of Alabama*, 214 U.S. 1, 29 S. Ct. 605, 53 L. Ed. 885 (1909).
- 21 U.S.—*U.S. v. Viess*, 273 F. 279 (W.D. Wash. 1921).
- 22 Fla.—*Kurtz v. State*, 22 Fla. 36, 1886 WL 1187 (1886).
- As to the definition of a police magistrate, see § 13.
- 23 Me.—*Sprague v. Inhabitants of Androscoggin County*, 104 Me. 352, 71 A. 1090 (1908).